

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

<b>IN THE MATTER OF THE APPLICATION ) OF DODGE COVE MARINE FARM, INC. ) FOR AN AQUACULTURE LEASE ) LOCATED IN NEW MEADOWS LAKE, ) BRUNSWICK, CUMBERLAND COUNTY, ) MAINE )</b>	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION</b>
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On April 10, 2002, Dodge Cove Marine Farm of Walpole, Maine applied for an aquaculture lease totaling 0.365 acres in the coastal waters of the State of Maine, located in New Meadows Lake, in Brunswick, Cumberland County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica), European oysters (Ostrea edulis), and hard clams (Mercenaria mercenaria) using suspended culture techniques. The application was accepted as complete on July 22, 2002. A public hearing on this application was held on March 27, 2003 at 7:00 p.m. in Brunswick.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that an aquaculture lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

**Evidence Introduced Concerning the Nature**  
**and Impact of the Proposed Lease**

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the March 27, 2003 public hearing. At the public hearing, testimony was given by Richard Clime, representing the applicant Dodge Cove Marine Farm, and Jon Lewis, the Department's Aquaculture Environmental Coordinator.

According to the application and the testimony by Richard Clime, vice-president of Dodge Cove Marine Farm, hereafter referred to as the applicant, the proposed aquaculture lease is sought to raise American oysters, European oysters and hard clams. The applicant requests a lease site totaling 0.365 acres and a lease term of ten (10) years.

The proposed lease activities would consist of growing oysters and clams in two floating upweller systems. Each upweller system consists of an 11' x 4' x 2' upweller tank, containing 12 silos, and a 4'-wide side walkway. According to the application, each upweller has a capacity of 500,000 juvenile shellfish. Electrically powered pumps operating 50% below their maximum 900 gal./min. capacity pump ambient sea water past the shellfish, bringing them food and oxygen. The upwellers will be assembled at the water's edge and deployed in early May of each year. Seed shellfish from Muscongus Bay Aquaculture in Bremin, Mook Sea Farm in Walpole, Pemaquid Oyster Company in Bremen or Marshall Point Sea Farm in Tenants Harbor will be placed in the silos for grow-out to one half inch in size. The applicant testified that the shellfish will be cleaned three times per week and will be graded by hand on mesh sieves once per week. Shellfish that have reached one half inch will be transferred to another lease site containing floating bags for further growth. At the end of July the remaining shellfish will be removed and the equipment will be disassembled and transported away for storage.

The proposed lease site would be accessed by crossing the properties of two riparian landowners. The applicant has received permission from the landowners to cross their

properties. A written agreement between the applicant and the landowners was provided with the application. The applicant testified that Dodge Cove Marine Farm has operated an experimental lease in the same area for four years, and has had no complaints from the landowners regarding the operations.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to the application, the bottom of the proposed lease site is composed predominantly of silt over marine clay with some small rocks scattered across the lease site. Tidal range is 1-1.5 feet and depth varies from very shallow near the bank to nearly 15 feet near the northeastern edge of the lease site. The current flow at the proposed site is a few centimeters per second and flows in a north/south direction. Fauna at the proposed lease site includes soft shell clams, false angel wing clams, hard shell clams, gastropods (abundant), mud snails (abundant), ascidians (common), tunicates (common), sponges (common), anemones (common), polychaete worms (common), crabs (rare), and hermit crabs. Local flora includes common plants, such as mixed marsh grasses, filamentous forms of algae, small red algae, and sea lettuce. According to the application, no known species of fish use the lease area for spawning or migration. Additionally, according to the application, no interference with plant growth is anticipated, because the upwellers will be moored in water at least six feet deep and will not touch bottom.

According to the applicant, navigational use of the area consists of recreational kayaking and canoeing. A commercial kayak rental business previously launched kayaks in the New Meadows Lake, but now launches from the other side of the Bath Road. According to the application, kayaks and canoes may be launched to the side of the upwellers. Additionally, according to the applicant, no commercial fishing or shellfishing has been observed at the site. The applicant included letters from Steve Walker, Brunswick's Natural Resource Planner and Harbormaster, and Eric Butler, the chair of the Brunswick Marine Resources Committee, with his application. According to Mr. Walker and Mr. Butler, the lease area does not support an active shellfishery, and the lease will therefore not pose a threat to the local shellfish industry.

They also indicated that the proposed lease activities will not present a hazard to navigation or an impediment to existing uses of the area.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on October 17, 2002. During the site visit, a SCUBA survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit and he provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the proposed site is located in the New Meadows Pond and abuts the shore at the NW, SW and SE corners. The depths at the NE corner and center of the proposed lease site during the site visit were 15.96 feet and 15.10 feet, respectively. Tidal range is severely restricted by a spillway at the southern end of the pond. The bottom of the lease site consists of soft mud interspersed with large boulders.

According to the site report, the proposed lease site consists of water temperatures of approximately 54°F and dissolved oxygen levels ranging from 99.0 to 104.4% saturation. Local flora and fauna at the proposed lease site consists of brown and red algae, encrusting bryozoans, hermit crabs, knotted wrack, periwinkles, sand shrimp, and a variety of species of sponge (abundant); horseshoe crabs, sea peach, soft-shelled clams, surf clams and razor clams (common); and eel grass (small patch at NW corner), frilled anemone, moon snails and rock crabs (occasional). According to the AEC, the proposed lease activities will not have a negative impact on the local flora and fauna.

According to the AEC, there are no moorings located in the area of the proposed lease site. The lease activities will not interfere with the New Meadows Marina, which is located on the opposite side of Bath Road. According to the site report, the proposed activities could potentially affect riparian ingress and egress. However, the AEC noted that applicant has permission to conduct the lease activities from those riparian owners who would be affected. Additionally, the AEC testified that the Department did not receive any complaints regarding the operation of the experimental lease in the same location.

Navigation in the area, according to the AEC, is limited due to the shallow water depths and the embankment and small dam that cut off the proposed lease area from the New Meadows River. Some recreational boating in kayaks and canoes may occur, but there is no through traffic. The recreational vessels may access the lower pond via a dirt launching ramp at the north end of the upper pond. According to the AEC, the proposed lease activities are not expected to restrict use of the area.

According to the site report, no fishing was observed in the proposed lease area during the site visit. Some recreational fishing may occur in the area. A variety of commercially exploited shellfish species were observed, however, not in commercially viable quantities. Therefore no commercial fishing is expected in the area. The nearest aquaculture lease site is located approximately .59 miles north of the proposed lease site.

According to the site report, the proposed lease is located in an area classified as conditionally approved for the harvest of shellfish by the Department's Water Quality Division. Because the proposed lease activities would not include harvest for human consumption, the classification will not affect the proposed activities. Also, according to the report, the proposed lease site is not located in an "Essential or Significant Wildlife Habitat" regulated by the Department of Inland Fisheries and Wildlife (IF&W).

### **Findings of Fact**

The proposed lease site is located in the New Meadows Lake and abuts the shoreline at the NW, SW and SE corners. The proposed lease site would be accessed by crossing the properties of two riparian landowners. The applicant has received written permission from the landowners to cross their properties in order to conduct the proposed aquaculture activities. There are no moorings located in the area of the proposed lease site. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

Navigation in the lease area is limited to recreational kayaks and canoes. The kayaks and canoes can be launched to the side of the upwellers, or at the dirt ramp at the north end of

the lake. Based on this evidence, I find that the lease will not unreasonably interfere with navigation.

No commercial fishing is expected in the area of the proposed lease site. Recreational fishing may occur in the lease area. The nearest existing aquaculture lease is located .59 miles to the north. The area of the proposed lease is classified as conditionally approved for the harvest of shellfish. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site includes encrusting bryozoans, a variety of species of sponge, hermit crabs, horseshoe crabs, periwinkles, sand shrimp, sea peach, soft-shelled clams, surf clams, razor clams and marsh grasses. The current flow is estimated to be a few centimeters per second. The upwellers will be moored in water at least six feet deep and will not touch bottom. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed shellfish will be obtained from Muscongus Bay Aquaculture in Bremin, Mook Sea Farm in Walpole, Pemaquid Oyster Company in Bremen or Marshall Point Sea Farm in Tenants Harbor. Based on this evidence, I find that there is an available source of American oysters, European oysters and hard clams.

The proposed lease site is not located within 1,000 feet of any public beaches, parks or docking facilities. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

### **Conclusions of Law**

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters, European oysters and hard clams; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

### **Decision**

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 0.365 acres to the applicant from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica), European oysters (Ostrea edulis), and hard clams (Mercenaria mercenaria) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$1,500 if the total square footage of all structures on the lease is less than or equal to 400 square feet or \$5,000 if the total square footage of all structures on the lease is greater than 400 square feet.

### **Conditions to be Imposed on Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) Recreational fishing and boating shall be allowed on the open areas of the lease

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

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**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**